

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 2019-CA-2878

DIVISION: CV-G

ANGELINA G. MALOVINI,

Plaintiff,

v.

**MARK A. CLAYMAN, M.D.,
LOREN Z. CLAYMAN, M.D., P.A.,
a Florida corporation,
ELANA CLAYMAN, and
ALLERGAN SALES, LLC,
a foreign limited liability company,**

Defendants.

COMPLAINT

The Plaintiff, **ANGELINA G. MALOVINI**, sues the Defendants, **MARK A. CLAYMAN, M.D., LOREN Z. CLAYMAN, M.D., P.A., ELANA CLAYMAN,** and **ALLERGAN SALES, LLC**, and alleges the following:

GENERAL ALLEGATIONS

1. This is an action for damages in excess of \$15,000, exclusive of attorney's fees, costs, and interest.
2. All conditions precedent to the filing of this action have been performed or have occurred.
3. At all times material hereto, the Plaintiff, **ANGELINA G. MALOVINI** (hereinafter "Ms. Malovini"), was and is a resident of, and permanently domiciled in, Jacksonville, Duval County, Florida.

4. All medical care and treatment rendered to Ms. Malovini upon which the claims set forth herein are based took place in Jacksonville, Duval County, Florida.

5. At all times material hereto, the Defendants, **MARK A. CLAYMAN, M.D.** (hereinafter “Clayman Junior”) and **ELANA CLAYMAN**, were and are residents of, and permanently domiciled in, Jacksonville, Duval County, Florida.

6. At all times material hereto, the Defendant, **LOREN Z. CLAYMAN, M.D., P.A.** (hereinafter “the Clayman Practice”) was and is a Florida Corporation, existing and operating under the laws of the State of Florida, and in fact doing business in Jacksonville, Duval County, Florida, to-wit: offering plastic surgery and aesthetic spa services and products to the general public. The Clayman Practice’s principal address is 1801 Barrs Street, Suite 200, Jacksonville, Florida 32204, and the Clayman Practice may be reached for service of process through its registered agent, Loren Z. Clayman, M.D. (hereinafter “Clayman Senior”), at 1801 Barrst Street, Suite 200, Jacksonville, Florida 32204.

7. The Defendant **ALLERGAN SALES, LLC** (hereinafter “Allergan”) was and is a foreign limited liability company, with its principal place of business and permanent domicile at 2525 Dupont Drive, Irvine, California 92612.

8. Allergan is authorized to do business in the State of Florida, and has and is doing business in the State of Florida, to-wit: researching, testing, designing, developing, manufacturing, marketing, promoting, distributing, selling, or otherwise placing into the stream of commerce medical devices and/or pharmaceuticals, including but not limited to, Allergan Natrelle saline filled breast implants and warranties for same, in Jacksonville, Duval County, Florida.

9. Allergan may be reached for service of process in Florida through its registered agent, CT Corp. System, at 1200 South Pine Island Road, Plantation, Florida 33324.

10. Allergan's co-conspirators and joint venturers, whom Allergan aided and abetted in a fraudulent scheme, were: (i). Clayman Senior"); (ii). Clayman Junior; (iii). Clayman Senior's wife, Elana Clayman (hereinafter "Elana Clayman") and (iv). the Clayman Practice.

FACTUAL ALLEGATIONS

The Clayman Saline Breast Implant Warranty Scheme

11. Clayman Senior was first licensed as a medical doctor in the State of Florida on January 10, 1975. On December 31, 1976, he completed a residency in plastic surgery, and he began practicing in Jacksonville, Florida. Soon after establishing his plastic surgery practice at the P.A., he began performing breast augmentation surgeries. During the 1980's, a substantial portion of the breast augmentation procedures he performed were with silicone filled breast implants.

12. After the FDA prohibited the sale of most silicone implants in 1992, Clayman Senior began using saline filled implants exclusively.

13. As of the early 2000s, the Clayman Practice began marketing its breast augmentation practice to patients of modest means. To reach this population of potential patients, the Clayman Practice advertised extensively in free local discount publications such as *Mint Magazine*, *Money Pages*, and *Folio Weekly*; samples of these advertisements are attached and incorporated by reference as "Composite Exhibit A."

14. To attract patients of modest means, the Clayman Practice began charging less than any other plastic surgeons for augmentation mammoplasty procedures. Specifically, the Clayman Practice charged no more than \$3,750 for an augmentation mammoplasty procedure

(breast augmentation); by contrast, most plastic surgeons in the Jacksonville, Florida community charged between \$5,000 and \$10,000 for a breast augmentation.

15. To reach this very low price point, the Clayman Practice did the following: performed procedures within its own offices rather than at a hospital or surgical center; performed procedures without the assistance of an anesthesiologist or qualified nurse anesthetist; set up two surgical rooms connected by a swinging door, so the surgeon could have two surgeries going at one time; performed breast augmentations in only 20 to 30 minutes, when most plastic surgeons take between one and two hours; purchased saline solution in large bulk bottles rather than single use surgical bags; and used the same make and model saline breast implant for every procedure because it was the cheapest. Indeed, after the FDA once again permitted silicone breast implants for breast augmentations, the Clayman Practice continued using saline breast implants exclusively because they were cheaper than silicone implants.

16. No later than the mid-2000s, Clayman Senior and/or Elana Clayman began repeatedly telling their breast augmentation patients that they had ruptured, deflated, or leaking saline breast implants, and that they needed to have removal and replacement surgeries as a result. However, Clayman Senior and/or Elana Clayman were lying to their patients; the breast implants were not ruptured, deflated, or leaking (not defective); and the removal and replacement surgeries they recommended were not necessary. Clayman Senior and/or Elana Clayman lied to their patients because they knew that most of them could not afford to pay for additional surgeries, but that by claiming that saline breast implants were ruptured, deflated, or leaking, they could seek to have the breast implant manufacturers pay for additional surgeries through their Warranties. After June 30, 2008, Clayman Junior joined the Clayman Practice and began practicing plastic surgery, including breast augmentations. He, too, began lying to his patients

about ruptured, deflated, or leaking saline breast implants, and he also began making an excessive or unusually high number of warranty claims for saline breast implants.

17. To make false warranty claims to Inamed/McGhan (which was later acquired by Allergan), the Clayman Practice and/or Elana Clayman had each patient and Clayman Senior or Junior sign a warranty claim form stating that the patient had a rupture, deflation, or leak that required a removal and replacement surgery, and assigning the benefits of the warranty to the Clayman Practice. The Clayman Practice and/or Elana Clayman had patients sign Allergan's claim forms *before* the surgeon had even performed the removal and replacement surgery to confirm that a rupture, deflation or leak had actually occurred. After the surgery, the Clayman Practice and/or Elana Clayman sent the completed warranty claim form and removed saline implant(s) to Allergan pursuant to the requirements of the Warranty.

18. Upon receiving the warranty claim paperwork and the returned breast implant(s) from the Clayman Practice and/or Elana Clayman, Allergan would then undertake a "Laboratory Analysis" on the returned breast implants to determine the cause of a claimed rupture/deflation/leak; after making the determination, Allergan generated a report of its findings.¹ Nearly every *Laboratory Analysis* report for saline filled breast implants returned by the Clayman Practice and/or Elana Clayman found no evidence of a "loss of shell integrity, resulting in implant rupture or deflation." Nevertheless, Allergan sent the Clayman Practice a check for the Surgery Money (either \$1,200 or \$2,400, depending upon the type of Warranty that applied) for every warranty claim made by the Clayman Practice over a 15-year period. As a result, Allergan funded thousands of harmful, unnecessary surgeries procured by the Clayman Practice's lies to patients.

¹ One important reason the Clayman-Allergan scheme was undiscovered for a number of years was that Allergan did not as a matter of course provide patients with copies of their *Laboratory Analysis* reports.

19. From the *Laboratory Analysis* reports and the claim forms--signed jointly by Clayman Senior or Junior and each patient—Allergan knew two facts: First, Allergan knew that the Clayman Practice was lying to its patients about their need for unnecessary removal and replacement surgeries; second, Allergan knew that these lies were made for the purpose of procuring from Allergan, through the Warranty, the Surgery Money. In particular, the claim forms, signed by Clayman Senior or Junior and the patients, revealed to Allergan that Clayman Senior or Junior had told patients their implants were ruptured, deflated or leaking and needed to be surgically removed and replaced; the corresponding *Laboratory Analysis* reports, however, demonstrated to Allergan that Clayman Senior or Junior's representations to patients were false and intended to procure the Surgery Money for unnecessary removal and replacement surgeries. Armed with this knowledge, Allergan could have refused to pay the Surgery Money under the terms of the Warranty. Instead, Allergan paid the Surgery money to the Clayman Practice so that the Clayman Practice could "pocket" the Surgery Money for unnecessary removal and replacement surgeries.

20. When Clayman Senior and Elana Clayman first began pursuing the saline breast implant warranty scheme in the mid-2000s, the Clayman Practice purchased saline filled breast implants from both Allergan and Mentor, Allergan's primary American competitor in the manufacture of breast implants (Mentor was later acquired by Johnson & Johnson). When Mentor received a high number of warranty claims relative to the number of implants purchased by the Clayman Practice, Mentor's quality assurance department (hereinafter "Mentor QA") contacted its regional sales manager and advised him that the Clayman Practice had made approximately 40 warranty claims in the preceding year, which amounted to 30% of all saline breast implants the Clayman Practice purchased from Mentor. Mentor QA considered this

percentage to be excessive and indicative of fraud. Mentor QA asked its regional sales manager to visit the Clayman Practice in person and demand an explanation for the excessive number of saline breast implant warranty claims.

21. Thereafter, the regional sales manager went to the Clayman Practice and told a female employee that he needed to discuss the excessive saline breast implant warranty claims with Clayman Senior. In response, the employee said, “I told him he was going to get in trouble if he kept doing this.” When the employee went to Clayman Senior’s office to tell him that the regional sales manager wanted to speak with him, she returned soon afterward and told the regional sales manager that Clayman Senior did not wish to speak with him. In response, the regional sales manager told the employee that Mentor would no longer sell breast implants to the Clayman Practice. Since this incident, Allergan has been the exclusive supplier of breast implants to the Clayman Practice.

22. In contrast to Mentor, Allergan has never confronted Clayman Senior about his excessive warranty claims for saline breast implants, even as the number of warranty claims to Allergan has increased exponentially. A copy of a bar graph showing the Clayman Practice’s saline breast implant warranty claims to Allergan between January 1, 2000 and December 31, 2015 is attached and incorporated by reference as “Exhibit B” to this *Complaint*.

23. According to Allergan’s own studies, the rate of spontaneous deflations for Natrelle saline filled breast implants is approximately 2.7% to 6.8% at 5 years, and approximately 10% to 13.8% at 10 years, which amounts to an average deflation rate of 1.2% for each year after implantation.

24. By comparison, between January 1, 2008 and December 31, 2015, Allergan sold the Clayman Practice **11,082** pairs of saline breast implants. During that same time period, the

Clayman Practice made **5,118 warranty** claims for saline breast implants, which amounts to **a failure rate of 46%**.

25. Allergan had a deep financial motivation for paying the Clayman Practice's 5,118 warranty claims. Between January 1, 2008 and December 31, 2015, the Clayman Practice purchased 11,082 pairs of saline breast implants from Allergan, which makes the Clayman Practice one of Allergan's top 10 breast implant customers in Florida. Furthermore, the Clayman Practice purchased a host of other aesthetic products from Allergan, including the following: Botox, Latisse, Juvederm, Kybella, SkinMedica, Vivate, and CoolSculpting (a product marketed by Zeltiq Aesthetics, which is a subsidiary of Allergan). As the above-noted print advertisements from the Clayman Practice show ("Composite Exhibit A"), the Clayman Practice is essentially a "one supplier shop."

26. The Clayman Practice is a Diamond Level member of the Allergan Partner Privileges program for Allergan Aesthetics products (i.e., Natrelle, Botox, Latisse, Juvederm, Kybella, SkinMedica, Vivate, and CoolSculpting). The Allergan Partner Privileges program provides members with rebates, sales growth rewards, a special online physician locator listing, priority customer service line access, preferred shipment status, and certificates and status displays.² Indeed, when a nurse employed by the Clayman Practice asked Clayman Senior why he believed Allergan would keep paying his high volume of warranty claims without question, Clayman Senior told her, "I know they're going to pay them all because I'm a Diamond Level partner."

27. Hence, even though Allergan knew that the Clayman Practice was lying to its patients about leaking, ruptured or deflated implants, that the Clayman Practice was performing

² See, <https://www.allergannetwork.com/components/app/content/pdf/APP2.0-Customer-FAQ.pdf>.

unnecessary removal and replacement surgeries, and that the Clayman Practice was making false warranty claims for its saline breast implants, Allergan paid millions of dollars in false warranty claims to the Clayman Practice because it was making so much money in total sales of aesthetic products from the Clayman Practice.

28. Other plastic surgeons report that in response to their saline breast implant warranty claims, Allergan demanded further proof that the claimed ruptures, deflations, or leaks were not the result of actions by patients or surgeons, even though the other plastic surgeons made fewer than 5 saline breast implant warranty claims per year. Oftentimes, the other plastic surgeons' warranty claims were ultimately denied by Allergan. The key distinction between these other plastic surgeons and the Clayman Practice is that the other plastic surgeons were not "one supplier shops," and they purchased their aesthetic products (including saline breast implants) from more than one supplier.

**Allergan's Warranty through which Allergan Knowingly Funded
the Clayman Practice's Unnecessary, Harmful Surgeries**

29. With all Natrelle breast implants, Allergan includes its "ConfidencePlus Warranty." According to its own literature, Allergan's Warranty applies to all FDA-approved Natrelle breast implants, provided the implants were used as intended and as directed, by qualified and licensed surgeons. However, the Warranty only applies to cases of:

- Loss of shell integrity, resulting in implant rupture or deflation that requires surgical intervention
- Capsular contracture (Baker Grade III/IV) with *Natrelle* Gel implants that requires surgical intervention

30. There are two versions of the Warranty: Standard and Premier. The Premier Warranty costs an additional \$100 with each newly purchased pair of implants, and \$200 after a

replacement under the Warranty; the Standard Warranty comes at no additional cost with each newly purchased pair of implants, but costs an additional \$100 after a replacement under the Warranty. The Standard Warranty provides, among other things, for a lifetime replacement of the ruptured implant and, for ten years, the replacement of the contralateral implant.³ The Premier Warranty provides, among other things, for lifetime replacement of both ruptured and contralateral implants. The Standard Warranty initially comes with Natrelle implants free of additional cost, and costs \$100 in the event of revision surgeries under warranty.

31. For purposes of this case, the critical coverage under both Warranties was the amount reimbursed for the cost of replacement/revision surgery (the “Surgery Money”). Under the Standard Warranty, if the originally provided implants were ruptured or otherwise deemed defective under the Warranty, then Allergan would not only provide replacement implants, but it would also provide \$1,200 of Surgery Money for the cost of removing and replacing the patient’s implants. Under the Premier Warranty, Allergan provided \$2,400 of Surgery Money for the cost of replacement/revision surgery.

32. In relation to patients of the Clayman Practice, the Surgery Money provided by Allergan went not to the patient who purchased the Warranty, but to the surgeon performing the removal and replacement surgery, i.e. the Clayman Practice. In Ms. Malovini’s case, and the cases of the Clayman Practice’s other breast augmentation patients, the surgeons at the Clayman Practice pocketed the Surgery Money, which was funneled through Allergan’s Warranty, and used the Surgery Money to perform thousands of unnecessary surgeries that harmed their patients. The surgeons at the Clayman Practice and Elana Clayman repeatedly lied to their

³ At first, only Natrelle Style 163 saline filled implants had lifetime replacement for contralateral breast implants; other Natrelle saline filled implants had only a 10 year warranty for contralateral implants. Beginning June 1, 2009, the Standard warranty was changed to provide for the lifetime replacement of contralateral breast implants for all Natrelle saline filled implants.

patients, including Ms. Malovini, telling them that the original implants were ruptured, deflated, or leaking and that, as a result, they needed surgery to remove and replace their purportedly defective saline breast implants. Allergan knew about these lies, and the company substantially assisted, conspired with, and engaged in a joint venture with the surgeons' fraudulent scheme by funding the unnecessary, harmful surgeries by directly paying the Surgery Money to the Clayman Practice and/or Elana Clayman.

33. Since acquiring McGhan/Inamed, Allergan devised an "off-balance-sheet" method of paying warranty claims for Natrelle saline filled breast implants. Specifically, to the best of the undersigned attorney's information and belief, Allergan pays breast implant warranty claims through Del Mar Indemnity Company, LLC, a captive insurance company created and owned by Allergan.⁴ When a manufacturer such as Allergan creates a captive insurance company, the manufacturer is provided a means of reclassifying otherwise taxable income from across its various divisions and subsidiaries as "premium payments" that go to the captive insurance company. The formerly taxable income that is reclassified as "premiums" then accumulates within the captive, making it, essentially, a very large "slush fund." In the event that the manufacturer uses the captive insurance company to pay a "loss," such as a warranty payment, the loss is not reflected in Allergan's balance sheets or filings with the Securities and Exchange Commission. In addition, because the captive is not a third-party company, Allergan is free to manipulate the claims payment process without outside interference.

**Allergan's Similar Course of Conduct during the Same Period of Time
in which the Company Paid Physicians to Use Their Products**

34. The Clayman saline implant warranty scheme is not the first time Allergan has

⁴ See, https://opencorporates.com/companies/us_hi/206243D1.

been implicated in a scheme whereby the company bribes physicians to purchase the company's products, as Allergan has been implicated in violations of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b), at least six times, resulting in Allergan paying a total of \$1.089 billion in criminal penalties and civil settlements.

35. The Anti-Kickback Statute prohibits anyone from

knowingly and willfully offer[ing] or pay[ing] remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person—

...

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment⁵...

42 U.S.C. §1320a-7b(b)(2).

36. Over the past eight years, Allergan was involved in the following:

A. **September 1, 2010**, Allergan was forced to pay \$600 million in settlement of criminal and civil complaints that included allegations of providing free physician workshops and dinners, paying physicians to attend “advisory boards” promoting off-label uses, and created Alphamedica, which administered a speakers bureau that paid physicians \$1,000 to allow sales representatives to shadow them at work.⁶

⁵ Because the Clayman Practice's patients paid for their breast augmentation procedures with cash (not under a Federal health care program), the Anti-Kickback Statute does not apply to the Clayman scheme, and Plaintiff asserts no claim under the Anti-Kickback Statute. Plaintiff, however, alleges the facts concerning Allergan's conduct under the Anti-Kickback Statute to show this Court that it is quite plausible that Allergan, consistent with its past criminal conduct, engaged here in criminal conduct by conspiring with, substantially assisting, and jointly venturing with the Clayman Practice to perpetuate fraud upon its patients.

⁶ See, <https://www.justice.gov/opa/pr/allergan-agrees-plead-guilty-and-pay-600-million-resolve-allegations-label-promotion-botox>; <https://www.cbsnews.com/news/how-allergan-sponsored-a-history-of-sausages-to-promote-botox-illegally/>.

B. **September 15, 2010**, Allergan's Forest Laboratories division was forced to pay a \$313 million settlement of criminal and civil complaints that included allegations of cash payments to physicians that the company described as "grants" and "consulting fees," expensive meals, and lavish entertainment to physicians to induce them to prescribe the drugs Celexa and Lexapro.⁷

C. **October 29, 2015**, Allergan's Warner Chilcott division was forced to pay a \$125 million settlement in a case that included allegations of violations of paying doctors speaking fees to induce them to prescribe the drugs Asacol, Actonel, and Loestrin.⁸

D. **December 15, 2016**, Allergan's Forest Laboratories division was forced to pay a \$38 million settlement in a case that included allegations of paying kickbacks to physicians to induce them to prescribe the drugs Bystolic, Savella, and Namenda.⁹

E. **June 29, 2017**, Allergan was forced to pay a \$13 million settlement in a case involving allegations of providing valuable business consulting services, continuing medical education, and other valuable services to physicians to induce them to prescribe Allergan eye care products including Restasis, when other less expensive treatment alternatives were available.¹⁰

⁷ See, <https://www.justice.gov/opa/pr/drug-maker-forest-pleads-guilty-pay-more-313-million-resolve-criminal-charges-and-false>.

⁸ See, <https://www.wsj.com/articles/allergan-unit-to-plead-guilty-to-fraud-pay-125-million-1446139657?mod=mktw>.

⁹ See, <https://www.justice.gov/opa/pr/forest-laboratories-and-forest-pharmaceuticals-pay-38-million-resolve-kickback-allegations>.

¹⁰ See, http://www.pietragallo.com/library/files/nevyas_allergan_press_release_final.pdf.

F. **Pending case, *U.S. ex rel. Wood v. Allergan, Inc.***, civil complaint includes allegations that Allergan provided “customer care kits,” office supplies, and over \$100 million in free drug samples to targeted physicians to induce them to prescribe Allergan drugs.¹¹

37. Allergan’s previous conduct demonstrates that its involvement in the Clayman breast implant warranty scheme was and is part of a larger course of conduct whereby the company’s marketing plan includes bribing physicians.

Angelina G. Malovini

38. After giving birth to two children while in her early 20s, Ms. Malovini was unhappy with the appearance of her breasts due to sagging and small size (she was a B cup). She wanted her breasts to have a “perky” and “lifted” appearance.

39. On September 22, 2011, she presented to Clayman Junior to be examined for a possible breast augmentation. Clayman Junior positioned Ms. Malovini in front of a mirror, he asked her to take off her shirt and bra, and he examined her breasts. After examining her breasts he described them as “cow tits.” Ms. Malovini told Clayman Junior that she wanted her breasts to be “perky” and “lifted,” as well as larger (a small to full C cup). Clayman Junior recommended that she have an augmentation and “internal lift.” She then requested that he not cause her breasts to be hard, as she was aware that he had a reputation for giving women hard implants. In response, Clayman Junior told her that he would put enough saline in the implants for them to be “swishy” and not “hard.” On that same date he provided her with a written surgical estimate for a breast augmentation and “Internal Lift,” all for what he reported to her was a special price of \$3,750 (the same price he charged to all patients for the same procedures).

¹¹ See, 246 F.Supp.3d 772 (S.D. N.Y. March 31, 2017).

40. On February 17, 2012, Ms. Malovini presented for the recommended surgery at the office of the Clayman Practice. In the surgical intake paperwork she described the size of her breasts as B cups, she reported that her breasts sagged, and she said that she wanted to be a “full C” cup. She also asked how an “internal lift” worked. A single preoperative photograph, taken from something between a standard frontal and bird’s eye view, demonstrates natural appearing breasts with deflated upper poles, likely grade 1 or 2 ptosis, and possibly smaller breast on the left.

41. In the operative report of February 17, 2012, Clayman Junior documented making incisions for the implants at the inframammary creases. Although he identified the procedure as involving a “Bilateral internal lift,” there is no documentation as to how this procedure was carried out. The OR Record states that he placed Allergan Natrelle Style 68 320cc saline implants into her breasts, and that he inflated them “to optical capacity to minimize rippling and give the patient her desired look.” Nevertheless, Clayman Junior failed to document how much saline he used to inflate the breast implants. According to the OR Record, the entire procedure took 44 minutes to complete. Clayman Junior documents placing the implants in a “dual plane”, or partially under the pectoralis major muscle, however this procedure was performed under IV sedation alone, which would make submuscular implant placement difficult. Furthermore, postoperative photos are not consistent with submuscular placement.

42. According to Ms. Malovini, she was still awake during the surgery because she could hear the surgical personnel discussing their plans for the weekend. Following surgery she waited in a chair, and was then sent home. After going to bed when she returned home, she woke up the next morning and vomited. Looking in the mirror, she saw that her breasts had purple, yellow, and green bruises.

43. On February 20, 2012, Ms. Malovini returned to the Clayman Practice for her first post-surgical follow up visit. Clayman Junior failed to document a physical examination in his office notes. In his patient follow up ledger he documented “Pt look great.” He documented that she asked when the swelling would “go down,” as well as when she could wear a bra. Clayman Junior failed to document what actions he took with her at the office that day, nor any recommendations for her further care.

44. Ms. Malovini returned to Clayman Junior on February 24, 2012 (there is no office note for this visit). In the patient follow up ledger, someone documented that she had her sutures removed and was given “steri” “strips.” Someone else documented that she was “very happy.”

45. Ms. Malovini returned to Clayman Junior on April 15, 2014. The office note for that date reflects that she complained of “hardness of [her] implants,” and that one breast was “higher than the other.” Clayman Junior failed to document a physical examination. In the patient follow up ledger, someone documented that she had “0 issues but noticed changes to Breast R>L.” Someone at the Clayman Practice also documented in the patient ledger that she had no “injury” or “trauma,” and that she had “Possible Cap. Contracture, Possible Leak.” The follow up ledger lists her options for further care as the following: “[W]ait & watch for few for more changes”; undergo a revision surgery in which the left implant would be replace with a larger sized implant filled with saline at the “same vol b/c likes current size.”

46. According to Ms. Malovini, on April 15, 2014, she told Clayman Junior that her breasts were too hard, and that she wanted them to be softer. Clayman Junior said that he could not reduce the amount of saline in her implants because her skin “stretched already,” but that he could replace her existing implants with larger ones filled with the same amount of saline as before. She agreed to this procedure because she believed he was going to make her breasts

softer. She also reports that he asked if she had the warranty, and that when she told him she did, he said, “Good, I won’t charge you anything and we’ll go through the insurance for it.” Ms. Malovini then said, “We can actually go through the warranty? That’s awesome.” In response, Clayman Junior said, “Yeah, you can if you got the warranty.” According to Ms. Malovini, and contrary to what is documented by Clayman Junior, he did not offer switching to silicone implants as an option; he only offered saline breast implants.

47. On April 15, 2014, Clayman Junior provided Ms. Malovini with a written surgical estimate that stated she would undergo a “Bilateral adjustment (replace implants).” According to the estimate, there would be “No charge” for the surgery.

48. On June 20, 2014, Ms. Malovini presented for her second breast surgery with Clayman Junior. In her surgical intake dated June 20, 2014, Ms. Malovini wrote that her “bags [were] too hart, want them softer”; “[r]ight breast is lower”; and “don’t want them bigger.” Clayman Practice personnel had Ms. Malovini sign an *Authorization for and Consent to Surgery or Therapeutic Procedures* that stated she would be undergoing “Bilateral softening of implants possible Right deflation Bilateral Replace.” A single preoperative frontal photograph demonstrates grossly over-augmented breasts that appear hard with significant “shelf” transition from the upper chest to the implants, characteristic of subglandular breast augmentation (not submuscular). The right breast/implant appears smaller than the left implant, suggestive of partial deflation (likely due to gross overfilling of the implants).

49. In the operative report dated June 20, 2014, Clayman Junior documented that upon dissecting down to the right implant capsule, the implant was removed and found “to have a slow leak with tissue in the implant valve and fill channel.” He also noted “capsule thickening along the lateral pole of the breast,” and a “healing capsular tear over the dome in the location of

the muscle consistent with some form of trauma to the breast.” He notes that he then removed fluid, repaired the “capsular injury” with sutures, and performed a capsulotomy over the “thickened area.” Upon dissecting down to the left implant capsule, the left implant was found to be intact, but was removed nonetheless. Clayman Junior notes the presence of “capsule thickening along the inferior-medial aspect,” which he released with electrocautery. Allergan Natrelle Style 68 330cc saline implants were implanted into both breasts and inflated to her “previous volume of 450ccs to minimize rippling and give the patient her desired look and fullness with a slightly softer feel.” The manufacturer’s maximum recommended volume for this specific implant is 360cc, therefore Clayman Junior overfilled the implant by 25%. According to the OR Record, the entire procedure took only 48 minutes to complete.

50. On or about June 20, 2014, Clayman Junior had Ms. Malovini sign an Allergan warranty claim form stating that she had a rupture, leak or deflation at her right breast implant due to tissue in the valve and fill channel. He also signed the form and sent it with the removed implants to Allergan pursuant to the terms of the warranty. According to the Clayman Practice payment ledger for Ms. Malovini, the Clayman Practice received a payment from Allergan in the amount of \$2,400 on August 28, 2014 in relation to the right breast implant. Elana Clayman then deposited the Surgery Money into a special bank account for Surgery Money received from Allergan.

51. On June 30, 2014, Ms. Malovini reported to Clayman Junior that her breasts were still too firm and she wanted to know when the “hardness would go away.” In response, Clayman Junior told her that her breasts would “get better within a couple of months.”

52. In 2016, Ms. Malovini noticed that her right breast was larger and lower than her left breast; additionally, neither breast had softened after the previous surgery. Later she went

for an annual examination with her OB/GYN, who noticed a lump between her right breast and armpit. She was then referred to Mayo Clinic Jacksonville's Breast Clinic, where she presented on September 23, 2016. After a physical examination and ultrasound, the lump was found to be benign, specifically, it was a band of fibroglandular, nodular breast tissue without a dominant mass..." Her right areola at the nipple "4:00 position" was found to be soft and flat. Ms. Malovini was told that the lump was from scar tissue from her breast surgeries. Ms. Malovini's was charged for the "internal lift" (not a recognized procedure in plastic surgery), but it was not documented in any operative report, and, therefore it is not known whether it was performed.

53. On November 23, 2016, Ms. Malovini returned to Clayman Junior with complaints that her right breast had recently changed and appeared to have a lump that made it appear to be larger than her left breast; she also reported that her right breast hung lower than the left. According to the patient follow up ledger, Clayman Junior noted mild asymmetry that he related to "Poss. Traum [sic] from mammogram" or a "tear scar capsule or muscle." He documented "[n]o obvious abnormalities & only mild" swelling. A single frontal photograph shows grossly over-augmented breasts with an appearance typical of subglandular implants with capsular contracture (or grossly overfilled implants). The right breast was slightly lower than the left breast (by approximately 1-2cm). Breast volume appeared symmetric. Clayman Junior recommended that she monitor her right breast and return in 6 weeks for further evaluation.

54. Ms. Malovini, however, reports that during her office visit on November 23, 2016, Clayman Junior asked her if she purchased a warranty with her surgery on June 20, 2014, and she had not. She reports that Clayman Junior became very upset with her.

"Why didn't you get it done?" he demanded. He told her that he could not "redo" her breasts without the warranty, so he instead he gave her a roll of gauze and told her to wrap it

under her right breast every night for a month. Ms. Malovini followed his recommendation, but it did not improve the symmetry of her breasts.

55. Presently, Ms. Malovini's complaints are that her right breast is bigger and lower than her left breast, and that her left breast looks "oval." She also complains of "horrible ripples" and hardness. She is embarrassed because people notice how hard they are when she gives hugs, and the rippling is noticeable in clothing. Recent professional photographs taken from the standard 5 views, with several additional views, demonstrate grossly overaugmented breasts that are characteristic of Clayman Junior and Clayman Senior's results with other breast augmentation patients. The implants are likely in the subglandular plane (not submuscular) as evidenced by the "rock in a sock" appearance, and significant shelf transition from the upper chest to the implant. The lack of dimensional planning to match an appropriate implant to a patient's particular anatomy is evidenced by poor soft tissue coverage with visible rippling in the lower poles of the breasts. The implants have slightly different shapes, likely due to capsular contracture or the "internal lift" procedure (which may or may not have been performed in this patient).

COUNT I – CLAYMAN DEFENDANTS' MEDICAL NEGLIGENCE

56. Ms. Malovini re-alleges and incorporates by reference paragraphs 1 through 55.

57. At all times material, Clayman Junior owed Ms. Malovini a duty to exercise that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, was recognized as acceptable and appropriate by reasonably careful physicians caring for a patient such as Ms. Malovini.

58. On or between September 22, 2011, and November 23, 2016, Clayman Junior and/or the Clayman Practice fell below the accepted and/or applicable standard of care in the treatment of Ms. Malovini in one or more of the following ways:

a. Failing to properly document Ms. Malovini's medical and surgical care. Clayman Junior's medical documentation for this patient is far below standard of care. There is no detailed documentation of specific patient complaints, physical examinations, or explanation of medical decision making for any patient encounter. The patient photographs consist of single AP photographs, each taken in a different setting and from a different angle/distance. These photographs are below standard of care, which would include consistent 5 view photographs (AP, left and right oblique, and left and right lateral) before and after each surgery, and at long term follow up;

b. Failing to document medical and surgical decision making for Ms. Malovini's care. In the medical records there is no documented comprehensive discussion of the planning involved in breast augmentation, which should include the following: the incision to be used, the plane at which the implant will be placed, the type of implant, and the size of the implant;

c. Failing to take into account the patient's individual anatomy and goals. Planning a breast augmentation should be a patient-driven process, yet Clayman Junior applied a "one-size-fits-all" approach to Ms. Malovini in which he placed into her over-filled saline implants that were larger than the patient desired. Based on her initial photographs, this patient would have benefited from a small to moderate augmentation with consideration of a mastopexy. Although Clayman Junior typically documents that patients do not wish to have mastopexy scars, what he actually tells them is that he *does*

not perform mastopexy, and that he will instead achieve the same result with an “internal lift.” There is no recognized procedure known as an “internal lift,” and all that he does is place overfilled saline implants that lead to a variety of problems, including hard, painful breasts, misshapen breasts, capsular contracture, soft tissue atrophy, visible rippling, and implant deflations. Ignoring patient requests and preferences in favor of a simplistic approach that serves to generate warranty claims is far below the standard of care and unethical;

d. Failing to interact with patients in an appropriate, professional and ethical manner. Clayman Junior’s bedside manner, as has been the case with many other of his patients, is far below the standard of care. He examined Ms. Malovini by asking her to stand in front of a mirror and disrobe without a chaperone present. He then examined her breasts from behind, and made lewd comments such as that she had “cow tits”;

e. Misrepresenting to Ms. Malovini that he would be giving her a “special price” for her augmentation procedure, yet charging her and every other patient the same price;

f. By placing grossly overfilled saline implants, Clayman Junior predisposed Ms. Malovini to valve incompetence and leakage while making her uncomfortable and unhappy. When she returned with complaints, he told her that one of her implants was deflated, leaking or ruptured, and he took her to surgery to replace the implants so he could get payment through Allergan’s warranty. He has done this with many other patients, and it is therefore no surprise that he was extremely upset with Ms. Malovini told him that she didn’t get a warranty after her second surgery. This approach represents an unethical approach to patient care, using his patients as a means to make warranty

claims that fund his procedures (which simply repeat the cycle). In this patient's case, he overfilled her implants on both occasions;

g. By repeatedly, grossly overfilling Ms. Malovini's breast implants, Clayman Junior caused deformities at her breasts, which progressively became more difficult and expensive to surgically correct;

h. By failing to perform revision breast augmentation procedures with appropriately sized, silicone gel filled implants, a proper site change to a submuscular plane, an inframammary approach, and proper anesthesia with some level of muscle paralysis, which would have more likely than not have resulted in an acceptable aesthetic outcome and resolution of Ms. Bianchi's complaints;

i. By failing to appropriately assess and counsel Ms. Malovini about realistic and safe recommendations that would address her concerns and obtain her goals. Ms. Malovini's complaints and deformities were set in motion by a combination of poor preoperative counseling and assessment, as well as poor to non-existent surgical planning and preparation, and poor intraoperative execution of the first surgery and all subsequent surgeries. Initially, a properly executed dual plane breast augmentation with appropriately sized silicone gel-filled implants would have more likely than not have delivered the aesthetic result she desired. Instead, she was left with a continuing deformity and poor aesthetic appearance that included overfilled saline implants in a subglandular position, breast size asymmetry, and position asymmetry;

j. By failing to take measures to prevent infectious agents and other materials from contaminating her implants; and/or

k. On one or more occasions, by fraudulently concealing or intentionally misrepresenting to Ms. Malovini and others that her saline implant spontaneously deflated as a result of defects in the implants rather than due to his surgical practices. Such fraud, concealment, or intentional misrepresentation caused Ms. Malovini to conclude that the problems she was having with her breasts were the result of product defects rather than her surgeon's breaches of the applicable standard of care.

59. As a direct and proximate result of above noted breach or breaches of the standard of care by Clayman Junior and/or the Clayman Practice, Ms. Malovini suffered bodily injury and resulting pain and suffering, mental anguish, disability, disfigurement, and loss of the capacity for the enjoyment of life, has incurred and will incur in the future expense of hospitalization, medical and nursing care and treatment, and aggravation of a previously existing condition. These losses are permanent or continuing in nature, and she will suffer them in the future.

60. Furthermore, on one or more occasions Clayman Junior and/or employees or agents of the Clayman Practice fraudulently concealed or intentionally misrepresented to Ms. Malovini and/or others that a saline implant that had been implanted in her body spontaneously deflated, ruptured, or leaked as a result of a product defect rather than breaches of the standard of care; such fraud, concealment, or intentional misrepresentation caused Ms. Malovini and others to conclude that the problems she was having with her breasts were the result of product defects rather than the result of breaches of the applicable standard of care by Clayman Junior and/or employees or agents of the Clayman Practice.

WHEREFORE, the Plaintiff, **ANGELINA G. MALOVINI**, demands judgment for damages against the Defendants, **MARK A. CLAYMAN, M.D.** and **LOREN Z. CLAYMAN, M.D., P.A.** together with the costs of this action, and the Plaintiff respectfully demands a trial by

jury on all issues so triable.

COUNT II – CLAYMAN DEFENDANTS' BREACH OF FIDUCIARY DUTY

61. Ms. Malovini re-alleges and incorporates by reference paragraphs 1 through 55.

62. On or between September 22, 2011 and November 23, 2016, Ms. Malovini was a patient of Clayman Junior and the Clayman Practice. By virtue of the physician-patient relationship, Clayman Junior and the Clayman Practice had a fiduciary duty to Ms. Malovini to not perform acts for his/its own pecuniary gain that were contrary to her welfare.

63. Clayman Junior and/or the Clayman Practice violated this fiduciary duty to Ms. Malovini in one or more of the following ways:

(a). By repeatedly claiming that one of her breast implants had spontaneously deflated as a result of a product defect when in fact it had not.

(b). By repeatedly operating on Ms. Malovini, which placed her at an increased risk for surgical and anesthetic complications, yet simply repeating the same procedures that were previously performed.

(c). By repeatedly not performing the surgery that her physical condition actually required in favor of surgery that took less time and skill, to save Clayman Junior and/or the Clayman Practice time and money.

(d). By repeatedly operating on her when he/it knew or should have known that he/it did not have the skill or competency to perform the surgeries within the standard of care.

(e). By repeatedly operating on her so that Clayman Junior and/or the Clayman Practice could recover the surgery money from Allergan.

(f). By performing surgery with inadequate anesthesia because it was cheaper, which in turn led to improper implant placement, as well as increased pain, discomfort, and anxiety.

64. Furthermore, on one or more occasions Clayman Junior and/or employees or agents of the Clayman Practice fraudulently concealed or intentionally misrepresented to Ms. Malovini and/or to others that a saline implant that had been implanted in her body spontaneously ruptured, deflated or leaked as a result of a product defect, when it had not; such fraud, concealment, or intentional misrepresentation caused Ms. Malovini and/or others to conclude that the problems she was having with her breasts were the result of product defects rather than the result of breaches of the applicable standard of care by Clayman Junior and/or employees or agents of the Clayman Practice.

WHEREFORE, the Plaintiff, **ANGELINA G. MALOVINI**, demands judgment for damages against the Defendants, **MARK A. CLAYMAN, M.D.** and **LOREN Z. CLAYMAN, M.D., P.A.** together with the costs of this action, and the Plaintiff respectfully demands a trial by jury on all issues so triable.

COUNT III – CLAYMAN DEFENDANTS' FRAUD

65. Ms. Malovini re-alleges and incorporates by reference paragraphs 1 through 55.

66. On one or more occasions, Clayman Junior and/or employees or agents of the Clayman Practice made the following false statements or representations, which were intended to conceal his/its inability or unwillingness to perform the breast augmentation procedures competently and within the standard of care, and which in fact misled Malovini and/or others, and/or caused Ms. Malovini to respond in the following ways to her detriment:

a. On or about September 22, 2011, Clayman Junior recommended to Ms.

Malovini that she have a procedure called an “internal lift” that could accomplish the same goals as a mastopexy without leaving scars. In fact, there is no recognized procedure known as an “internal lift,” and Clayman Junior simply planned to place overfilled saline implants into her breasts. These representations caused Ms. Malovini to conclude that the proposed surgery would involve a procedure known as an “internal lift” that would address the same problems as a mastopexy. As a result, she proceeded with the surgery recommended by Clayman Junior instead of going to another plastic surgeon;

b. On or about September 22, 2011, Clayman Junior provided Ms. Malovini with a written surgical estimate in which he recommended to her that she have a procedure called an “internal lift.” In fact, there is no recognized procedure known as an “internal lift,” and Clayman Junior simply planned to place overfilled saline implants into her breasts. These representations caused Ms. Malovini to conclude that the proposed surgery would involve a procedure known as an “internal lift.” As a result, she proceeded with the surgery recommended by Clayman Junior instead of going to another plastic surgeon;

c. On or about April 15, 2014, Clayman Junior told Ms. Malovini that he could replace her existing breast implants with larger saline implants filled with the same amount of saline as her previous implants to make her breasts softer, and that he could do this procedure under Allergan’s warranty, which he called “insurance.” In fact, the recommended procedure would not make her breasts softer, nor did the terms of Allergan’s warranty cover the recommended surgery. This representation caused Ms. Malovini to agree to have another surgery performed by Clayman Junior, and, as a result, she did not seek a second opinion from another plastic surgeon, nor did she seek legal

advice for a potential medical negligence claim;

d. On or about June 20, 2014, Clayman Junior and/or employees of the Clayman Practice provided Ms. Malovini with an *Authorization for and Consent to Surgery or Therapeutic Procedure* that stated she would be undergoing “Bilateral softening of implants possible Right deflation Bilateral Replace.” In fact, the procedure she was about to undergo would not make her breasts softer, nor did she have a possible right deflation. The representation about the “softening” caused Ms. Malovini to agree to have another surgery by Clayman Junior rather than seeking a second opinion from another plastic surgeon or seeking a legal opinion for potential medical negligence. The representation about “possible Right deflation” caused Ms. Malovini and/or others to conclude that the problems she was having with her breasts were the result of a product defect rather than the result of medical negligence by Clayman Junior and/or the Clayman Practice. This representation caused Ms. Malovini to agree to have another surgery by Clayman Junior rather than seeking a second opinion from another plastic surgeon or seeking a legal opinion for potential medical negligence; or

e. On or about June 20, 2014, Clayman Junior and/or employees of the Clayman Practice had Ms. Malovini sign an Allergan warranty claim form that stated she had a spontaneous rupture, leak or deflation at her right breast implant due tissue in the valve and fill channel. In fact, Ms. Malovini did not have a spontaneous rupture, leak or deflation of her right breast implant as a result of a product defect. This representation caused Ms. Malovini and/or others to conclude that she had a rupture, leak, or deflation at her right implant as a result of a product defect as opposed to due to a breach of the standard of care by Clayman Junior. As a result, Ms. Malovini did not seek a second

opinion from another plastic surgeon, nor did she seek legal advice for a potential medical negligence claim.

67. As a result of the above false statements or representations, Clayman Junior and and/or the Clayman Practice were able to continue collecting money in relation to the medical and surgical care of Ms. Malovini, and she did not seek a second opinion from another plastic surgeon, and/or she delayed seeking legal counsel for a potential medical negligence claim.

68. As a direct and proximate result of the above noted false statements or representations of Clayman Junior and/or employees or agents of the Clayman Practice, Ms. Malovini suffered bodily injury and resulting pain and suffering, mental anguish, disability, disfigurement, and loss of the capacity for the enjoyment of life, has incurred and will incur in the future expense of hospitalization, medical and nursing care and treatment, and aggravation of a previously existing condition. These losses are permanent or continuing in nature, and she will suffer them in the future.

WHEREFORE, the Plaintiff, **ANGELINA G. MALOVINI**, demands judgment for damages against the Defendants, **MARK A. CLAYMAN, M.D.** and **LOREN Z. CLAYMAN, M.D., P.A.** together with the costs of this action, and the Plaintiff respectfully demands a trial by jury on all issues so triable.

**COUNT IV – CLAYMAN DEFENDANTS’ AND ALLERGAN’S CONSPIRACY TO
COMMIT BREACH OF FIDUCIARY DUTY AND/OR FRAUD**

69. Ms. Malovini re-alleges and incorporates by reference paragraphs 1 through 55, 65-67, 69 and 70.

70. On or before September 22, 2011 and November 23, 2016, Clayman Junior, the Clayman Practice, and/or Elana Clayman entered into an agreement with Allergan to commit one

or more breaches of a fiduciary duty and/or fraud in relation to the patients of the Clayman practice. The following acts and conduct are illustrative of the parties' intent to enter this agreement:

a. The Claymans sending removed breast implants and warranty claim paperwork to Allergan, signed by both the patient and Clayman Junior, stating that the patient had a spontaneous rupture, deflation, or leak as a result of a product defect that required a removal and replacement surgery, and assigning the benefits of the warranty claim to the Claymans;

b. Allergan sending the Claymans a check for the Surgery Money despite the fact that its "Laboratory Analysis" on the returned breast implants found no evidence of a loss of shell integrity, resulting in implant rupture or deflation;

c. Allergan further demonstrating its assent to the agreement by repeating its conduct (paying warranty claims for saline breast implants that Allergan knew did not demonstrate a loss of shell integrity, resulting in implant rupture or deflation that requires surgical intervention) at least 1,330 times before January 1, 2011;

d. Allergan receiving, as consideration for its payment of the Surgery Money, the Claymans' purchase of large quantities of breast implants, medical devices, and pharmaceuticals from Allergan.

71. Allergan, through its employees or agents, knew that Clayman Junior and/or the Clayman Practice, was/were breaching a fiduciary duty owed to Ms. Malovini, and/or committing fraud upon her as well, due to the following:

(a). At the time that Allergan paid the warranty claim in relation to the June 20, 2014 implant removal and replacement surgery, Allergan had received more than

3,843 warranty claims from the Clayman Practice for saline breast implants that Allergan knew did not demonstrate a “loss of shell integrity, resulting in implant rupture or deflation that requires surgical intervention”;

(b). Allergan’s *Laboratory Analysis* report for the right saline filled breast implant that was implanted by Clayman Junior into Ms. Bianchi on February 17, 2012, and explanted by Clayman Junior on November June 20, 2014, did not demonstrate a “loss of shell integrity, resulting in implant rupture or deflation that requires surgical intervention,” and, thus, the June 20, 2014 surgery was not necessary as a result of a failed breast implant;

(c). The rate of ruptures, deflations, or leaks of Natrelle saline filled implants claimed by the Clayman Practice was markedly higher than the rate shown by Allergan’s own studies for Natrelle saline filled implants.

72. Allergan committed one or more of the following overt acts in furtherance of the conspiracy to breach a fiduciary duty and/or to commit fraud:

(a). Continuing to sell saline breast implants to the Claymans after 2010, even though Allergan had already received more than 1,330 warranty claims from the Clayman Practice for saline breast implants that Allergan knew did not demonstrate a “loss of shell integrity, resulting in implant rupture or deflation that requires surgical intervention”;

(b). Paying the Clayman Practice’s warranty claim, without requesting further corroboration, in relation to the right saline breast implant that Clayman Junior placed into Ms. Malovini on February 17, 2012, and which Clayman Junior surgically removed on June 20, 2014;

(c). Paying the Clayman Practice's warranty claim in relation to the right saline breast implant that Clayman Junior placed into Ms. Malovini on February 17, 2012, and which Clayman Junior surgically removed on June 20, 2014, even though Allergan had already received more than 3,843 warranty claims from the Clayman Practice that Allergan knew did not demonstrate a "loss of shell integrity, resulting in implant rupture or deflation that requires surgical intervention"; and/or

(d). Continuing to sell saline breast implants to the Clayman Practice after 2014, even though Allergan had already received more than 4,900 warranty claims for saline breast implants from the Clayman Practice that Allergan knew did not demonstrate a "loss of shell integrity, resulting in implant rupture or deflation that requires surgical intervention."

73. On or before June 20, 2014, through her work as the office manager of the Clayman Practice, Elana Clayman knew that Clayman Junior and/or the Clayman Practice were breaching a fiduciary duty owed to Ms. Malovini, and/or committing fraud upon her as well, due to the following:

a. The rate of ruptures, deflations, or leaks of Natrelle saline filled implants claimed by the Clayman Practice was markedly higher than the rates of ruptures, deflations, or leaks that saline breast implants typically experience for a similar number of patients;

b. The Clayman Practice's warranty claims to Allergan were fraudulent because they were for saline breast implants that had not actually experienced ruptures, deflations, or leaks; and

c. The Clayman Practice's breast implant patients were undergoing breast

implant revision surgeries that were not necessary as a result of ruptures, deflations, or leaks of their saline breast implants.

74. On or between June 20, 2014, and November 23, 2016, Elana Clayman committed one or more of the following overt acts in furtherance of the conspiracy to breach a fiduciary duty and/or to commit fraud:

- a. depositing the Surgery Money received from Allergan into a separate bank account or accounts controlled in whole or in part by Elana Clayman;
- b. managing the accounting of the separate bank account or accounts that held the Surgery Money in separate bookkeeping ledgers or systems controlled in whole or in part by Elana Clayman; and/or
- c. managing the Surgery Money separately from other income received by the Clayman Practice so that the Surgery Money would not be treated as taxable income by the Internal Revenue Service, the Florida Department of Revenue, or any other governmental agency.

75. As a direct and proximate result of the above noted conspiracy to commit fraud and/or breach of fiduciary duty by Clayman Junior, the Clayman Practice, Elana Clayman, and/or Allergan, Ms. Malovini suffered bodily injury and resulting pain and suffering, mental anguish, disability, disfigurement, and loss of the capacity for the enjoyment of life, has incurred and will incur in the future expense of hospitalization, medical and nursing care and treatment, and aggravation of a previously existing condition. These losses are permanent or continuing in nature, and she will suffer them in the future.

76. Furthermore, as a direct and proximate result of the above noted conspiracy to breach a fiduciary duty and/or to commit fraud by Clayman Junior, the Clayman Practice, Elana

Clayman, and/or Allergan, Ms. Malovini has spent monies in the amount of \$3,750 or more, for medical and/or surgical care by the Clayman Practice that was of no value, and which has caused her to have to incur future medical expenses to correct the damages done by said medical and/or surgical care.

WHEREFORE, the Plaintiff, **ANGELINA G. MALOVINI**, demands judgment for compensatory damages against the Defendants, **MARK A. CLAYMAN, M.D., LOREN Z. CLAYMAN, M.D., P.A., ELANA CLAYMAN**, and **ALLERGAN SALES, LLC**, together with the costs of this action, and the Plaintiff respectfully demands a trial by jury on all issues so triable.

**ALLERGAN AND ELANA CLAYMAN AIDING AND ABETTING THE
CLAYMAN PRACTICE'S BREACH OF FIDUCIARY DUTY AND/OR FRAUD**

77. Ms. Malovini re-alleges and incorporates by reference paragraphs 1 through 55, 65-67, 69 and 70.

78. Allergan, through its employees or agents, knew that Clayman Junior and/or the Clayman Practice was/were breaching a fiduciary duty owed to Ms. Malovini, and/or committing fraud upon her as well, due to the following:

(a). At the time that Allergan paid the warranty claim in relation to the June 20, 2014 implant removal and replacement surgery, Allergan had received more than 3,843 warranty claims from the Clayman Practice for saline breast implants that Allergan knew did not demonstrate a "loss of shell integrity, resulting in implant rupture or deflation that requires surgical intervention";

(b). Allergan's *Laboratory Analysis* report for the right saline filled breast implant that was implanted by Clayman Junior into Ms. Bianchi on February 17, 2012, and explanted by Clayman Junior on November June 20, 2014, did not demonstrate a "loss of shell integrity, resulting in implant rupture or deflation that requires surgical intervention," and, thus, the June 20, 2014 surgery was not necessary as a result of a failed breast implant; and

(c). The rate of ruptures, deflations, or leaks of Natrelle saline filled implants claimed by the Clayman Practice was markedly higher than the rate shown by Allergan's own studies for Natrelle saline filled implants.

79. Despite the aforesaid knowledge of Allergan through its employees or agents, Allergan provided substantial assistance to Clayman Junior and/or the Clayman Practice in committing fraud against, and/or breaching a fiduciary duty owed to Ms. Malovini in one or more of the following ways:

(a). Continuing to sell saline breast implants to the Claymans after 2010, even though Allergan had already received more than 1,330 warranty claims from the Clayman Practice for saline breast implants that Allergan knew did not demonstrate a "loss of shell integrity, resulting in implant rupture or deflation that requires surgical intervention";

(b). Paying the Clayman Practice's warranty claim, without requesting further corroboration, in relation to the right saline breast implant that Clayman Junior placed into Ms. Malovini on February 17, 2012, and which Clayman Junior surgically removed on June 20, 2014;

(c). Paying the Clayman Practice's warranty claim in relation to the right saline breast implant that Clayman Junior placed into Ms. Malovini on February 17, 2012, and which Clayman Junior surgically removed on June 20, 2014, even though Allergan had already received more than 3,843 warranty claims from the Clayman Practice that Allergan knew did not demonstrate a "loss of shell integrity, resulting in implant rupture or deflation that requires surgical intervention"; and/or

(d). Continuing to sell saline breast implants to the Clayman Practice after 2014, even though Allergan had already received more than 4,900 warranty claims for saline breast implants from the Clayman Practice that Allergan knew did not demonstrate a "loss of shell integrity, resulting in implant rupture or deflation that requires surgical intervention."

80. On or before June 20, 2014, through her work as the office manager of the Clayman Practice, Elana Clayman knew that Clayman Junior and/or the Clayman Practice were breaching a fiduciary duty owed to Ms. Malovini, and/or committing fraud upon her as well, due to the following:

a. The rate of ruptures, deflations, or leaks of Natrelle saline filled implants claimed by the Clayman Practice was markedly higher than the rates of ruptures, deflations, or leaks that saline breast implants typically experience for a similar number of patients;

b. The Clayman Practice's warranty claims to Allergan were fraudulent because they were for saline breast implants that had not actually experienced ruptures, deflations, or leaks; and

c. The Clayman Practice's breast implant patients were undergoing breast

implant revision surgeries that were not necessary as a result of ruptures, deflations, or leaks of their saline breast implants.

81. On or between June 20, 2014 and November 23, 2016, Elana Clayman committed one or more of the following overt acts in furtherance of the conspiracy to breach a fiduciary duty and/or to commit fraud:

a. depositing the Surgery Money received from Allergan into a separate bank account or accounts controlled in whole or in part by Elana Clayman;

b. managing the accounting of the separate bank account or accounts that held the Surgery Money in separate bookkeeping ledgers or systems controlled in whole or in part by Elana Clayman; and/or

c. managing the Surgery Money separately from other income received by the Clayman Practice so that the Surgery Money would not be treated as taxable income by the Internal Revenue Service, the Florida Department of Revenue, or any other governmental agency.

82. As a direct and proximate result of the substantial assistance provided by Allergan and Elana Clayman to Clayman Junior and/or the Clayman Practice, Ms. Malovini suffered bodily injury and resulting pain and suffering, mental anguish, disability, disfigurement, and loss of the capacity for the enjoyment of life, has incurred and will incur in the future expense of hospitalization, medical and nursing care and treatment, and aggravation of a previously existing condition. These losses are permanent or continuing in nature, and she will suffer them in the future.

83. Furthermore, as a direct and proximate result of the above noted substantial assistance provided by Allergan and Elana Clayman to Claymans Junior and/or the Clayman

Practice, Ms. Malovini has spent monies in the amount of \$3,750 or more, for medical and/or surgical care by the Clayman Practice that was of no value, and which has caused her to have to incur future medical expenses in the future to correct the damages done by said medical and/or surgical care.

WHEREFORE, the Plaintiff, **ANGELINA G. MALOVINI**, demands judgment for compensatory damages against the Defendants, **MARK A. CLAYMAN, M.D., LOREN Z. CLAYMAN, M.D., P.A., ELANA CLAYMAN** and **ALLERGAN SALES, LLC**, together with the costs of this action, and the Plaintiff respectfully demands a trial by jury on all issues so triable.

/s/ Christopher Shakib
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Florida Bar No.: 0947865
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REJUVENIZE
\$150

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PEEL
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dark spots,
acne, fine lines,
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FDA APPROVED
NO DOWNTIME
NON-INVASIVE

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Kybella
(MAKERS OF BOTOX)
TO ELIMINATE
YOUR DOUBLE CHIN

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BEAUTY IS GOLDEN



DR. LOREN CLAYMAN

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LONGER, THICKER
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5ml size
Rx Included!

\$110*
After \$40
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Offer expires 3-31-16
*Conditions Apply.

BOTOX
ANY 2 AREAS
(Both Crows Feet = 1 Area)
First Time Clients
Receive a
99% Glycolic Peel **FREE**
Now You're a Wrinkle Free VIP
*Must join Brilliant Distinctions Program

NOW \$250!*
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1 Syringe
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Vitalize Peel & SkinMedica HA5, Visible Results Immediately

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GLYCOLIC	REJUVENIZE
\$50 (Reg. \$75)	\$150 (Reg. \$200)
VITALIZE	
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5ml Size
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\$99 PER PERSON

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Now You're a Wrinkle Free VIP

JUVEDERM \$500 1 Syringe

All Injectables Done By Dr. Clayman

NECTIFIRM \$55 Firm Your Neck

Bye Bye EYE BAGS

Instant Visible Results.

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